

REMARKS

Applicant respectfully requests reconsideration of this application as amended. Claims 1, 19-39 are pending in the application. Claim 36 has been amended. No claims have been added. No claims have been canceled.

The Examiner indicated that Claims 21-24 and 31-34 are allowed. Applicant thanks the Examiner for indicating this and respectfully submits that the following remarks are directed to the remaining pending claims.

Although not made clear in the response, the Examiner appears to be maintaining the rejection of Claims 1 and 19-34 under the doctrine of double patenting as being unpatentable over Claim 1 of U.S. Patent No. 6,745,339. The Examiner has stated that Applicant's arguments fail to comply with 37 CFR stating that the arguments amount to a general allegation that the claims define a patentable invention without specifying how the claim language patentably distinguishes them from the references.

Applicant respectfully disagrees with the Examiner's statement. Applicant believes the argument was clear. Even so, Applicant will set forth the argument in a more clear fashion for the Examiner. Claim 1 includes the following limitations:

A method comprising:
evaluating at least one measured wait time associated with at least one user interface event in relation to a desired level of fault tolerance associated with an application executing in a system; and
dynamically selecting use of one of a plurality of fault tolerance schemes to improve user perceived performance of the system as a result of evaluating the at least one measured wait time in relation to the desired level of fault tolerance.

Thus, Claim 1 requires evaluating one or more measure wait time associated with one or more user interface events in relation to a desired level of fault tolerance associated with an

application executing in a system and dynamically selecting use of one of a plurality of fault tolerance schemes to improve user perceived performance of the system.

These limitations are not found in Claim 1 of the '339 patent. Claim 1 of the '339 patent is as follows:

A method of dynamically switching among a plurality of fault tolerance schemes associated with a fault tolerance mechanism that executes in a distributed system, the method comprising:

obtaining a wait time of at least one user interface event occurring in said distributed system, said wait time including at least one of a communications time, a service time and a fault tolerance time;

determining whether a mean of said wait time is greater than a predetermined mean wait time threshold;

determining whether said communications time, said service time and said fault tolerance time are mutually independent when said mean of said wait time is greater than said predetermined mean wait time threshold;

determining whether said mean of said wait time can be improved by reducing a mean of said fault tolerance time when said communications time, said service time and said fault tolerance time are mutually independent; and

switching from a first of said plurality of fault tolerance schemes to a second of said plurality of fault tolerance schemes when said wait time can be improved by reducing said mean of said fault tolerance time.

In reviewing Claim 1 of the '339 patent, Applicant respectfully submits that this claim does not claim evaluating measured wait time associated with one or more user interface events in relation to a desired level of fault tolerance associated with an application executing in a system. It is true that Claim 1 of the '339 patent sets forth obtaining a wait time of at least one user interface event and using it to determine a mean, but there is not limitations directed at evaluating that measured wait time in relation to a desired level of fault tolerance.

Furthermore, Applicant respectfully submits that Claim 1 of the '339 patent does not claim dynamically selecting use of one of a plurality of fault tolerance schemes to improve user perceived performance of the system. Claim 1 of the '339 patent does disclose switching fault tolerance schemes, but the claims do not require that this be done dynamically and as a result of evaluating the at least one measured wait time in relation to the desired level of fault tolerance as

in the currently pending claims. Thus, Claim 1 of the '339 patent and currently pending claim 1 are distinct from each other.

Again, Applicant reminds the Examiner that an Applicant is allowed to claim an invention in many different ways. Applicant is able to use this continuation application, with priority claimed to the same application as the '339 patent, to further prosecute claims to an invention that are not claimed in the same manner. In view of this, Applicant respectfully requests the Examiner to withdraw the double patenting rejection.

The Examiner rejected Claims 1, 19, 20, 25-34 and claim 35 under 35 U.S.C. § 102(e) as being anticipated by D'Souza (U.S. 6,446,218). Applicant respectfully disagrees.

Claim1 is as follows:

A method comprising:
evaluating at least one measured wait time associated with at least one user interface event in relation to a desired level of fault tolerance associated with an application executing in a system; and
dynamically selecting use of one of a plurality of fault tolerance schemes to improve user perceived performance of the system as a result of evaluating the at least one measured wait time in relation to the desired level of fault tolerance.
(emphasis added)

As set forth above, the limitations of claim 1 include evaluating a measured wait time associated with at least one user interface event and dynamically selecting a fault tolerance scheme to improve the user perceived performance.

Applicant respectfully submits these features are not shown in D'Souza. The Examiner believes these features are shown in D'Souza in column 7, lines 27-30 and lines 38-42. Applicant has reproduced those nine lines below:

The method also includes ascertaining a fault tolerance level associated with the software program, with the ascertaining being ascertained by examining the status of the software modules running on the first plurality of computers.

If the first suitable computer is available, the method further includes loading the another module of the software program on the first suitable computer, registering the first suitable computer as a computer capable of servicing transaction requests pertaining to the software program after the another module of the software program is loaded onto the first suitable computer, and routing the transaction requests pertaining to the software program to the first suitable computer after the registering.

However, Applicant respectfully submits that these features are not shown at these locations. More specifically, these sections of D'Souza do not discuss measuring the wait time associated with at least one user interface event. Examining status of software modules is not the same as measuring wait time associated with at least one user interface event. Applicant respectfully submits that such features are just not shown in D'Souza. Furthermore, these sections of D'Souza does teach, mention, nor disclose dynamically selecting a fault tolerance scheme. These sections merely discuss attempting to get another computer in a cluster of computers to run another copy of a software module. There is no mention of dynamically selecting a fault tolerance scheme.

The Examiner has also introduced column 13, lines 37-43 in this office action. However, Applicant again fails to see any teaching in this section of dynamically selecting a fault tolerance scheme.

In view of the above, the present invention as claimed in claim 1 is not anticipated by D'Souza.

With respect to Claims 31-33, the same arguments with respect to Claim 1 apply to Claims 31-33 as well and are incorporated herein by reference. Furthermore, Claims 31-33 sets forth that the selecting of one of the multiple fault tolerance schemes occurs to reduce fault tolerance time when communications time, service time, and fault tolerance time are independent to respect to each other. This is clearly not shown in D'Souza. More specifically, D'Souza does not specify any detail towards selecting a fault tolerance scheme to reduce fault tolerance time

when communications time, service time, and fault tolerance time are independent of each other.

Therefore, Applicant respectfully submits that Claims 31-33 are not anticipated by D'Souza.

With respect to Claim 35, the limitations of independent Claim 27 upon which it depends, are substantially similar to Claim 1. Therefore, for the same reasons as given above with respect to Claim 1, Applicant respectfully submits that Claim 35 is not anticipated by D'Souza.

With respect to Claims 36-39, the Examiner objected to these claims stating that they were dependent upon a rejected base claim, but would be allowable if re-written in independent form including all the limitations of the base claim and any intervening claims. Applicant has amended Claim 36 to include substantially all the limitations of the base claim and any intervening claims. Therefore, Applicant respectfully submits that Claims 36-39 are in condition for allowance.

Accordingly, Applicant respectfully submits that the rejection under 35 U.S.C. § 102(e) has been overcome by the amendments and the remarks. Applicant submits that claim 35 as amended are now in condition for allowance and such action is earnestly solicited.

Accordingly, Applicants respectfully submit that the objections to the claims and the abstract have been overcome by the amendments and the remarks and withdrawal of these rejections is respectfully requested. Applicants submit that Claims 1, 19-39 as amended are in condition for allowance and such action is earnestly solicited.

If there are any additional charges, please charge Deposit Account No. 02-2666 for any fee deficiency that may be due.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Date: 10|18|04

By: Michael J. Mallie
Michael J. Mallie
Reg. No. 36,591

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, California 90025
(408) 720-8300